

RICHARD T. MULLOY (Bar No. 199278)
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-3697
Tel: 619.699.4787
Fax: 619.699.2701
E-mail: richard.mulloy@dlapiper.com

EDGAR H. HAUG
ROBERT E. COLLETTI
JONATHAN R. WISE
FROMMER LAWRENCE & HAUG LLP
745 Fifth Avenue
New York, NY 10151
Tel: (212) 588-0800
Fax: (212) 588-0500

Attorneys for Defendant
CMT USA, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOON PARK, an individual,

Plaintiff,

v.

CMT USA, INC., a North Carolina
corporation,

Defendant.

CV NO. 08 CV 0668 DMS (NLS)

**DEFENDANT CMT USA, INC'S ANSWER
AND COUNTERCLAIMS**

JURY TRIAL DEMANDED

Judge: Hon. Dana M. Sabraw

Complaint: April 14, 2008

Defendant, CMT USA, Inc. ("CMT"), by its attorneys, answers the averments made in the numbered paragraphs of the Complaint filed by Plaintiff, Joon Park ("Park"), as follows:

THE PARTIES

1. With respect to paragraph 1 of the Complaint, CMT is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 1.

////

2. With respect to paragraph 2 of the Complaint, CMT admits that it is a North Carolina corporation with a place of business at 7609 Bentley Rd # D, Greensboro, NC 27409 USA. CMT denies the remaining allegations in paragraph 2.

JURISDICTION

3. With respect to paragraph 3 of the Complaint, CMT admits that Park purports to assert a claim under Title 35 of the U.S. Code. CMT also admits that Park purports to base subject-matter jurisdiction on 28 U.S.C. §§ 1331, 1338(a). CMT further admits that Park purports to base personal jurisdiction on 28 U.S.C. §§ 1391(c). Subject matter and person jurisdiction are conclusions of law. Subject matter and personal jurisdiction are, however, proper under 28 U.S.C. §§ 1331 and 1338(a) with the filing of the counterclaims in paragraphs 18-40 herein. Venue, under 28 U.S.C. §§ 1391(c), is a conclusion of law to which no response is required. CMT denies the remaining allegations in paragraph 3.

BACKGROUND FACTS

4. With respect to paragraph 4 of the Complaint, CMT admits that U.S. Patent No. 6,637,988 (“the ‘988 patent”) was issued on October 28, 2003 by the United States Patent and Trademark Office (“Patent Office”), that the ‘988 patent is entitled “Adjustable pocket drilling fixture,” and what appears to be a copy of the ‘988 patent was attached to the Complaint as Exhibit 1. CMT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, on that basis, denies the remaining allegations in paragraph 4.

5. With respect to paragraph 5 of the Complaint, CMT admits that U.S. Patent No. 7,134,814 (“the ‘814 patent”) was issued on November 14, 2006 by the Patent Office, that the ‘814 patent is entitled “Adjustable pocket drilling fixture,” and that what appears to be a copy of the ‘814 patent was attached to the Complaint as Exhibit 2. CMT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, on that basis, denies the remaining allegations in paragraph 5.

6. With respect to paragraph 6 of the Complaint, CMT is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 6.

1 7. With respect to paragraph 7 of the Complaint, CMT admits that a letter dated
2 February 28, 2008 was sent to and received by Albert E. Guarnieri and what appears to be a copy
3 of that letter is attached as Exhibit 3. CMT is without knowledge or information sufficient to
4 form a belief as to the truth of the remaining allegations and, on that basis, denies the remaining
5 allegations in paragraph 7.

6 **INFRINGEMENT OF THE '988 AND '814 PATENTS**

7 8. CMT incorporates herein by reference paragraphs 1-7.

8 9. CMT denies the allegations in paragraph 9.

9 10. CMT denies the allegations in paragraph 10.

10 11. CMT denies the allegations in paragraph 11.

11 12. CMT denies the allegations in paragraph 12.

12 **DEMAND FOR JURY TRIAL**

13 CMT admits that Park demands trial by jury on all issues triable by a jury.

14 **PRAYER FOR RELIEF**

15 CMT denies that Park is entitled to any of the relief averred in the Prayer for Relief.

16 **CMT'S AFFIRMATIVE DEFENSES**

17 **FIRST DEFENSE**

18 **(Noninfringement)**

19 13. CMT has not infringed, contributed to the infringement of, or induced the
20 infringement of any valid and enforceable claim of the '988 patent.

21 14. CMT has not infringed, contributed to the infringement of, or induced the
22 infringement of any valid and enforceable claim of the '814 patent.

23 **SECOND DEFENSE**

24 **(Patent Invalidity)**

25 15. The '988 patent and all the claims thereof are invalid under 35 U.S.C. §§ 102, 103,
26 and/or 112.

27 16. The '814 patent and all the claims thereof are invalid under 35 U.S.C. §§ 102, 103,
28 and/or 112.

1 **THIRD DEFENSE**

2 **(Laches)**

3 17. On information and belief, some or all of Park's claims for relief are barred, in
4 whole or in part, by the doctrine of laches.

5 **RESERVATION OF DEFENSES**

6 CMT reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil
7 Procedure, the Patent Laws of the United States and any other defenses, at law or in equity, that
8 may now or in the future be available based on discovery or any other factual investigation
9 concerning this case or any related action.

10 **CMT'S COUNTERCLAIMS**

11 Counterclaim Plaintiff, CMT USA, Inc. ("CMT"), by its attorneys, pleads the following
12 counterclaims against Counterclaim Defendant, Joon Park ("Park"):

13 **The Parties**

14 18. CMT is a North Carolina corporation with a place of business at 7609 Bentley Rd
15 # D, Greensboro, NC 27409 USA.

16 19. Upon information and belief, Park is an individual having an address at 1320
17 Virginia Avenue, Glendale, California 91202.

18 **Jurisdiction and Venue**

19 20. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*,
20 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. CMT seeks declaratory relief,
21 i.e., a declaration that U.S. Patent No. 6,637,988 ("the '988 patent") is not infringed and is
22 invalid. CMT also seeks declaratory relief that U.S. Patent No. 7,134,814 ("the '814 patent") is
23 not infringed and is invalid.

24 21. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

25 22. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and
26 1400(b).

27 /////

28 /////

FIRST COUNT

(Declaration of Noninfringement of the '988 Patent)

23. CMT repeats and realleges paragraphs 18-22 of the defenses and counterclaims.

24. The '988 patent, entitled "Adjustable pocket drilling fixture," issued on October 28, 2003.

25. There is an actual, substantial, and continuing justiciable controversy between CMT and Park regarding infringement of the '988 patent.

26. CMT has not infringed, contributed to the infringement of, or induced the infringement of any valid and enforceable claim of the '988 patent.

27. CMT is entitled to a declaration that it has not infringed, contributed to the infringement of, or induced the infringement of any valid and enforceable claim of the '988 patent.

SECOND COUNT

(Declaration of Invalidity of the '988 Patent)

28. CMT repeats and realleges paragraphs 18-22 of the defenses and counterclaims.

29. There is an actual, substantial, and continuing justiciable controversy between CMT and Park regarding the validity of the '988 patent.

30. The '988 patent and all the claims thereof are invalid under 35 U.S.C. §§ 102, 103, and/or 112.

31. CMT is entitled to a declaration that the '988 patent is invalid.

THIRD COUNT

(Declaration of Noninfringement of the '814 Patent)

32. CMT repeats and realleges paragraphs 18-22 of the defenses and counterclaims.

33. The '814 patent, entitled "Adjustable pocket drilling fixture," issued on November 14, 2006.

34. There is an actual, substantial, and continuing justiciable controversy between CMT and Park regarding infringement of the '814 patent.

////

1 35. CMT has not infringed, contributed to the infringement of, or induced the
2 infringement of any valid and enforceable claim of the '814 patent.

3 36. CMT is entitled to a declaration that it has not infringed, contributed to the
4 infringement of, or induced the infringement of any valid and enforceable claim of the '814
5 patent.

6 **FOURTH COUNT**

7 **(Declaration of Invalidity of the '814 Patent)**

8 37. CMT repeats and realleges paragraphs 18-22 of the defenses and counterclaims.

9 38. There is an actual, substantial, and continuing justiciable controversy between
10 CMT and Park regarding the validity of the '814 patent.

11 39. The '814 patent and all the claims thereof are invalid under 35 U.S.C. §§ 102, 103,
12 and/or 112.

13 40. CMT is entitled to a declaration that the '814 patent is invalid.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, CMT respectfully requests that this Court enter judgment in its favor and
16 against Park as follows:

17 (a) Dismissing the Complaint with prejudice and denying each request for relief made
18 by Park;

19 (b) Declaring that CMT has not infringed, contributed to the infringement of, or
20 induced the infringement of any valid and enforceable claim of the '988 patent;

21 (c) Declaring that CMT has not infringed, contributed to the infringement of, or
22 induced the infringement of any valid and enforceable claim of the '814 patent;

23 (d) Declaring that each claim of the '988 patent is invalid;

24 (e) Declaring that each claim of the '814 patent is invalid;

25 (f) Adjudging this to be an exceptional case under 35 U.S.C. § 285 and awarding
26 CMT its attorneys' fees;

27 (g) Awarding CMT its costs and expenses; and

28 /////

1 (h) Awarding CMT such other and further relief as the Court deems just and proper.

2 Dated: May 28, 2008

3 DLA PIPER US LLP

4 By: s/ Richard T. Mulloy

5 RICHARD T. MULLOY
6 richard.mulloy@dlapiper.com
7 Attorneys for Defendant
8 CMT USA, INC.

9 OF COUNSEL:

10 Edgar H. Haug
11 Robert E. Colletti
12 Jonathan R. Wise
13 FROMMER LAWRENCE & HAUG LLP
14 745 Fifth Avenue
15 New York, NY 10151
16 Tel: (212) 588-0800
17 Fax: (212) 588-0500

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), CMT hereby demands a trial by jury of all issues so triable in this action.

Dated: May 28, 2008

DLA PIPER US LLP

By: s/ Richard T. Mulloy

RICHARD T. MULLOY
richard.mulloy@dlapiper.com
Attorneys for Defendant
CMT USA, INC.

OF COUNSEL:

Edgar H. Haug
Robert E. Colletti
Jonathan R. Wise
FROMMER LAWRENCE & HAUG LLP
745 Fifth Avenue
New York, NY 10151
Tel: (212) 588-0800
Fax: (212) 588-0500

1 STEWART M. BROWN (Bar No. 174905)
2 RICHARD T. MULLOY (Bar No. 199278)
3 DLA PIPER US LLP
4 401 B Street, Suite 1700
5 San Diego, CA 92101-3697
6 Tel: 619.699.4787
7 Fax: 619.699.2701
8 E-mail: richard.mulloy@dlapiper.com

9 Attorneys for Defendant
10 CMT USA, INC., a North Carolina corporation

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 JOON PARK, an individual,
14 Plaintiff,

15 v.

16 CMT USA, INC., a North Carolina
17 corporation,
18 Defendant.

CV NO. 08 CV 0668 DMS (NLS)

PROOF OF SERVICE

19 I am a resident of the State of California, over the age of eighteen years, and not a party to
20 the within action. My business address is DLA Piper US LLP, 401 B Street, Suite 1700,
21 San Diego, CA 92101-42907. I hereby certify that on May 28, 2008, I caused the following
22 document(s) to be electronically filed with the Clerk of the Court and served on all parties to this
23 action using the CM/ECF system:

DEFENDANT CMT USA, INC'S ANSWER AND COUNTERCLAIMS

24 Paul Adams
25 The Adams Law Firm
26 550 West C Street, Suite 2000
27 San Diego, CA 92101
28 Tel: 619-241-4810
Fax: 619-95-5318
adamspatentlaw@gmail.com

- ☒ Via CM/ECF
- ☒ Via Email (PDF)
- ☐ Via First Class Mail
- ☐ Via Overnight Mail
- ☐ Via Hand Delivery
- ☐ Overnight Mail
- ☐ Via Facsimile

////

1 I declare that I am employed in the office of a member of the Bar of or permitted to
2 practice before this Court at whose direction the service was made.

3 Executed on May 28, 2008, at San Diego, California.

4
5 x

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Pamela Gomez

